Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-515

FEHR BROTHERS, INC.,
Petitioner,

v.

ACCIAIERIE WEISSENFELS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
for the Eighth Circuit

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OPINIONS BELOW

Petitioners seek a writ of certiorari from a final judgment of the Eighth Circuit Court of Appeals, filed August 18, 1978, dismissing the complaint of Plaintiffs Woodrow Hutson and John David Epperson against Defendant-Appellant, Acciaierie Weissenfels. A copy of the opinion of the Eighth Circuit is appended to this Petition. No official report of the Court's opinion has been printed as of the date this Petition is filed. (App. No. A).

JURISDICTION

Jurisdiction of this Court is invoked under the provisions of 28 *U.S.C.* 1254. Petitioners seek review of a judgment of the Eighth Circuit Court of Appeals entered en-banc on August 18, 1978 with three justices dissenting from the Court's opinion.

QUESTIONS PRESENTED FOR REVIEW

Did the Eighth Circuit Court of Appeals Err in Holding that Respondent Acciaierie Weissenfels Was, by Virtue of the Due Process Clause of the Fourteenth Amendment, Not Subject to In Personam Jurisdiction in the State of Arkansas?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This cause involves the Application of the Due Process Clause of Section I of the 14th Amendment to the United States Constitution to *Ark. Stat. Ann.* § 27-2502 (c)(1)(d), the Arkansas "long arm" statute.

A. Section 1 of the 14th Amendment provides:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within the jurisdiction the equal protection of the laws.

B. *Ark. Stat. Ann.* § 27-2502 (c)(1)(d) provides:

> 1. A Court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a (cause of action) (claim for relief) arising from the person's

> . . . (d) causing tortious injury in this State by an act or omission outside this State, if he regularly does or solicits business, or engages in any other persistent course of conduct in this State or derives substantial revenue from goods consumed or services used in this State." (*See* App. D).

STATEMENT OF THE CASE

This cause is an action for personal injuries filed by Plaintiffs Woodrow Hutson and John David Epperson against Defendants Fehr Brothers, Inc. and Acciaierie Weissenfels in the United States District Court of Arkansas, Texarkana Division. The accident in question occurred on May 9, 1976. The complaint alleges the plaintiffs' injuries were caused by defective chain which had been packaged and sold by Weissenfels to its North American distributor, Fehr Brothers, Inc., which had resold it in Arkansas. Plaintiffs are citizens of Arkansas. Fehr Brothers, Inc. is a New York Corporation. Acciaierie Weissenfels is a corporation engaged in chain manufacture organized and existing under the laws of Italy. The amount in controversy exceeds $10,000.00 and it is undisputed that Federal Diversity of Citizenship exists.

Following service of process upon Acciaierie Weissenfels by Plaintiffs under the provisions of *Ark. Stat.* § 27-2502 (c)(1)(d), this defendant filed a Motion to Dismiss on the contention that the Fourteenth Amendment prohibited the exercise of an *in personam* jurisdiction in Arkansas over the Italian corporation.

The District Court overruled Weissenfels' motion in a memorandum opinion entered August 22, 1977 (App. C). Thereafter, the trial court made the appropriate certification for an interlocutory appeal to the Eighth Circuit under the provisions of 28 *U.S.C.* 1292 (b) which agreed to hear the matter. On

March 22, 1978, a three judge panel affirmed the trial court's ruling by a divided vote (App. B). Thereafter, Weissenfels filed a Petition for Rehearing and a suggestion for an en banc hearing. This was granted by the appellate court which on August 18, 1978 by a vote of 4 to 3 reversed the trial court's decision on the grounds that the Due Process Clause prohibited subjecting Weissenfels to Arkansas' *in personam* jurisdiction.

Certiorari is sought from this final decision of the Eighth Circuit.

ARGUMENT

I

Petitioner Has Standing to Ask for Certiorari.

Petitioner, Fehr Brothers, Inc., clearly is adversely affected by the majority opinion of the Eighth Circuit. Petitioner's involvement in this cause arises solely from the fact that it distributed chain sold to it by Weissenfels under an exclusive distributorship agreement. The alleged acts of active negligence and breaches of warranty are attributed to Weissenfels. The gravamen of the complaint is that Weissenfels knowingly purchased low quality Yugoslavian chain and repackaged and sold it as high quality Italian chain manufactured by Weissenfels. Under such circumstances, Fehr Brothers, Inc., under Arkansas law, has causes of action over against Weissenfels both for indemnity and contribution. *See, e.g., Ark. Stat. Ann.* 34-1001, et seq.; *Dulin v. Circle F Industries, Inc.*, 558 F. 2d 456 (8th Cir. 1977.) In fact, subsequent to the trial court's overruling Weissenfels' motion to dismiss, Fehr has asserted cross-claims against Weissenfels, asking for indemnity and contribution. The decision of the Eighth Circuit holds Weissenfels is not subject to *in personam* jurisdiction in Arkansas, on account of the injuries received by Hutson and Epperson. It is clearly *res judicata* that Fehr may not assert any cross-claims against Weissenfels. There simply is no reason to require Fehr to return to the District Court, suffer a preordained dismissal of its cross-complaints, return to the Eighth Circuit for a likewise preordained affirmation, and then ask this Court for certiorari. This cause is ripe for determination by this Court and Petitioner is clearly adversely affected by a decision—the net effect of which is to require it to bear the financial brunt of any judgment which may be entered in the Arkansas action, and to likewise require it to relitigate the same lawsuit in a foreign jurisdiction

in order to enforce its rights of indemnity and contribution. Indeed, there is authority for the proposition that Fehr would be an aggrieved party and entitled to appeal even had it not asserted its right of contribution. *See, e.g., Emmons v. Agricultural Ins. Co.*, 245 La. 411, 158 So.2d 594; *See, also, Dertz v. Pasquina*, 15 Ill. App. 3, 470, 305 N.E.2d 54; *Eltin v. Ava Truck Leasing, Inc.*, 100 N.J. Super. 515, 242 A.2d 663, affirmed in part, reversed in part; 53 N.J. 463, 251 A.2d 278. As an unsuccessful appellee which participated in the proceedings at the Circuit Court level, Fehr Brothers, Inc. has standing to ask for certiorari from an order which has an immediate, direct and adverse effect on its position.

II

The Majority Opinion of the Eighth Circuit Is in Conflict With the Applicable Decisions of the Arkansas Supreme Court.

There simply can be no question that the opinion of the majority of the Eighth Circuit in the present case is in direct conflict with the construction given to Arkansas' Long-Arm Statute by the Supreme Court of that State. *See, Nix v. Dunavant*, 249 Ark. 641, 460 S.W.2d 762, 764-765 (1970); *International Harvester v. Hendrickson Manufacturing Company*, 249 Ark. 298, 459 S.W.2d 62, 64-65 (1970); *Pennsalt Chemical Corp. v. Crown Cork & Seal Co.*, 426 S.W.2d 417, 419-22 (1968). This factor was candidly admitted by Judge Bright when, in his original dissenting opinion prior to the granting of a Petition for Rehearing, he stated, at Page 7 of the opinion (App. B):

> "No doubt the Court's decision accords with the Arkansas Supreme Court's interpretation of the State's longarm statute."

Again, in Judge Bright's subsequent *en banc* opinion, he conceded (P. 5):

> "Accordingly, Arkansas state law permits in personam jurisdiction over Weissenfels in this case."

This factor was likewise noted by Circuit Judge Lay in his dissenting opinion from the Court's final judgment by his notation:

> "I wish to make an additional observation. If this accident were pending in the State Court, it is clear that under the Arkansas statute, *Ark. Stat. Ann.* § 27-2502(c)(1)(d) that the Supreme Court of Arkansas would uphold the service of process on defendant Weissenfels."

There simply can be no dispute in the case at bar that Weissenfels could reasonably anticipate that its chain product would be distributed in the State of Arkansas. Weissenfels and Fehr Brothers, Inc. had an exclusive distributorship agreement. Under the terms of this agreement, it was the right of Fehr Brothers, Inc. to distribute Weissenfels chain in every state in the United States. Indeed, Weissenfels would have had reason to complain had not Fehr actively advertised, sold and distributed Weissenfels chain in Arkansas. Perhaps the most startling aspect of the majority opinion in the case at bar is that the Court specifically found that Weissenfels was, for purposes of the jurisdictional question, guilty of a tortious act outside of Arkansas which caused injury inside the State. The Court further found that Weissenfels had, over a period of years, derived "substantial revenue" from the sale by Fehr in Arkansas of Weissenfels' products (these sales over a four-year period amounted to $74,000.00). However, having found that the two prerequisites of the Arkansas long-arm statute had been met, i.e., the tortious act outside the State, and derivation of substantial revenue from sales within the State, the majority found that the Fourteenth Amendment prohibited Arkansas from exercising jurisdiction over this defendant.

The majority opinion was premised upon the consideration that Weissenfels owned no property and directly did no busi-

ness in Arkansas. The Court in effect found that, even though Weissenfels could have reasonably foreseen the presence of its product in Arkansas, there was not a sufficient basis for the exercise of due process jurisdiction in this case. The Eighth Circuit's rejection of the foreseeable presence of a product as a sufficient basis for jurisdiction is contrary to all of the above-quoted Arkansas Supreme Court decisions. For example, in the *Hendrickson Manufacturing Company* case, *supra*, the Arkansas Supreme Court was confronted with a fact situation almost identical to the case at bar. In *Hendrickson*, jurisdiction was upheld against a foreign corporation under the long-arm statute despite the fact that the defective product had not been directly distributed into this state by the defendant. Moreover, this result was reached despite the fact that defendant (a) owned no property in Arkansas; (b) did not solicit business in Arkansas; (c) maintained no offices or agents in Arkansas; and (d) sold its product to a separate corporate entity which acquired title to it and later introduced it as part of a finished product into Arkansas. As noted by the Court:

> Today manufacturers rarely deal directly with consumers. Their products are often designed for sale in whatever markets may be found for them. Such nationwide markets make it likely that consumer injuries will occur in states far removed from the manufacturer's place of business. It has therefore been suggested that the use of such products in the ordinary course of commerce is sufficient contact with the forum wherein the injury occurred to justify its exertion of jurisdiction. *Gray v. American Radiator & Standard Sanitary Corp., supra. See also, Anderson v. National Presto Industries*, 257 Iowa 911, 135 N.W.2d 639 (1965).

The exercise of due process jurisdiction based upon foreseeable presence of the product has unquestionably been the overwhelming trend of decisions in all of the states with equitable long-arm statutes. This trend was succinctly summarized

by the United States District Courts in the case of *Reiley v. P. J. Wolff & Sohne*, 374 Fed. Supp. 775 (D.C. New Jersey 1974) in which a German manufacturer of a press brake was held subject to New Jersey's long arm statute. The Court quoted with approval various state court decisions and noted:

> The New Jersey Courts on similar factual grounds have held that foreign corporations can thus be served and sued in State courts there. *Cerlisimo v. Heidelberg*, 122 N.J. Super 1, 298 A.2d 298, affirmed sub. nom. *Van Esuwen v. Heidelberg Eastern, Inc.*, 124 N.J. Super. 251, 306 A. 2d 79 (Appellate Division 1973).
>
> There a German corporation, H.D.A.G., with absolutely no plant, personnel or property within the United States manufacturing a printing press. H.D.A.G., in turn, sold its press in Germany, to an American distributor which in turn resold it to a New Jersey corporation whereat it caused allegedly by its negligence in construction an injury to a plaintiff in New Jersey. Upon these facts, the New Jersey courts held H.D.A.G. could be served under New Jersey's long-arm statutes, because the defendant could anticipate that its presses would cause injury if negligently made, and intended its machines to be sold in the United States, although it had no knowledge that it would be resold in any particular state of these United States.

A few of the multitude of decisions of other states which have held that a manufacturer or distributor subjects himself to due process jurisdiction if he knowingly introduces his commerce into the stream of interstate commerce are *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761; *Metal-Matic, Inc. v. Eighth Judicial District*, 415 Pac.2d 617 (Nev. 1966); *Anderson v. National Presto Industries*, 257 Iowa 911, 135 N.E.2d 639 (1965); *Atkins v. Jones & Lofton Steel Company*, 258 Minn. 571, 104 N.W.2d 888 (1960).

Again, it was candidly noted by Judge Bright in his initial dissenting opinion (Page 8);

> The majority's view is also in harmony with the trend of recent state court and Federal circuit court interpretations of the constitution of due process requirements establisned by the United States Supreme Court.

Petitioners respectfully submit that this cause is an appropriate one for certiorari in view of the admitted fact that the Eighth Circuit has reached a result contrary not only to the results of the Arkansas Supreme Court, but also to those decisions of other states construing their long-arm statutes. The majority opinion frankly acknowledges that they are retreating from the doctrine announced in the above-captioned cases on the theory that the pendulum has "swung too far" in favor of upholding service. If such a dramatic and far-reaching result is indeed to be reached, Petitioners respectfully feel that it is a doctrine which should be announced by this Court, and not by a bare majority of a sharply divided Appellate Court.

Finally, it should be noted that the majority opinion is premised in part upon a clearly erroneous statement as to the relationship of Fehr and Weissenfels. Judge Bright found in the *en banc* opinion (p. 3) that Fehr repackaged the chain received from Weissenfels. All counsel agreed and the record clearly reflects Fehr sold the chain in the identical containers and packaging in which it had been received from Weissenfels.

III

The Majority Opinion Is in Direct Conflict With the Decisions of Other Circuits.

As noted above, it was candidly conceded by Judge Bright that the position of the majority in this case was in conflict with the trend of decisions in other Circuit Courts of Appeal. Not

only have the other circuits clearly adopted the foreseeable presence doctrine, but Petitioner has been unable to find a single case wherein jurisdiction was refused in a fact situation where the defendant not only received substantial revenue from sales within the forum state but likewise had actively advertised its products therein. There simply is no dispute as to this latter factor in the case at bar. Fehr Brothers, Inc. had, as authorized by its distributorship agreement, specifically and systematically advertised the quality and competitiveness of Weissenfels chain in Arkansas. A typical example of such advertisements by Fehr on behalf of Weissenfels is contained at Page 10 of the final dissenting opinion and states:

> Acciaierie Weissenfels has been producing chains for over five hundred years and is a pioneer in the technological development of chain. Our factory is equipped with the most chain welding and heat treating equipment available and staffed by highly skilled workmen to whom chain making is a family tradition.
>
> We welcome your inquiries for High Test and Special Alloy Steel Chains.

The majority opinion in the case at bar simply glossed over the fact of this advertising.

The following decisions of other Circuits are clearly in conflict with the opinion of the majority in the case at bar. *Eyerly Aircraft v. Killian*, 414 Fed. 2d 591 (5th Cir. 1969); *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 Fed. 2d 231 (9th Cir. 1969); *Ajax Realty Corp. v. J. F. Zook, Inc.*, 493 Fed. 2d 817 (4th Cir. 1972) *cert. denied*, 411 U.S. 966, 36 LEd.2d 687, 93 S.Ct. 2148; *Honeywell, Inc. v. Metz Apparatewerke*, 509 F2d 1137 (7th Cir. 1975). All of these cases have specifically held that where a foreign manufacturer sells its goods to an independent distributor who later resells the product within the forum state, that the original manufacturer is subject to due proc-

ess jurisdiction, on the theory that he knew or should have reasonably foreseen that his product might be resold within the forum state. Former Justice Goldberg, in the *Eyerly Aircraft* case, *supra*, discussed in detail the evolution of the expansion of due process jurisdiction to reach this result:

> This result also obtains where the manufacturer has elected to distribute his wares to independent wholesalers instead of through its own corporate apparatus, so that it is only very indirectly responsible for the product reaching the injured customer. *Florio v. Power Tool Corp.*, 3 Cir. 1959, 248 Fed. 2d 367; *Etzler v. Dille & McGuire Manufacturing Co.*, W.D.Va., 1965, 249 F. Supp. The present trend is to take the next logical step and hold that a corporation is answerable where it introduces its product into the stream of interstate commerce if it had reason to know or expect that its product would be brought into the state where the injury occurred.
>
> . . . When a manufacturer voluntarily chooses to sell his product in a way in which it will be resold from dealer to dealer, transferred from hand to hand, he cannot reasonably claim that he is surprised at being held to answer in any state for the damage the product causes. Nor can he deny the substantial interest of the injured person's state in providing a convenient forum for its citizen. *Keckler v. Brookwood Country Club*, N.D.Ill., 1965, 248 F Supp. 645, 648-649.

In the *Duple Motor Bodies* case, the Ninth Circuit specifically found that an English manufacturer of coach bodies was subject to the long-arm statute, wherein this product had reached Hawaii through an independent distributor. The Ninth Circuit did not share the concern of the majority of the Eighth Circuit that an international defendant was involved. The Court noted:

> Nor do we share Appellant's concern that we are in an area of international and not simply interstate commerce.

The lower Federal Courts reading the clear holdings of the above quoted cases, and the applicable decisions of the State Supreme Courts have repeatedly held international defendants subject to state long-arm jurisdiction where the product was introduced into the forum state by an independent distributor. *See, e.g. Blum v. Kawaguchi Ltd.*, 331 F. Supp. 216 (W.D. Neb. 1971); *Hetrick v. American Honda Motor, Inc.*, 429 F. Supp. 116 (D.C. Neb. 1976); *Reiley v. P. J. Wolff & Sohne. supra.* The majority opinion of the Eighth Circuit in effect holds that these lower Courts have acted unconstitutionally on the facts in their case, and likewise that its sister Circuits have incorrectly applied the due process clause of the United States Constitution. Surely, such a sweeping pronouncement by such a sharply divided Court presents a proper case for certiorari.

IV

The Majority Opinion Has the Effect of Declaring Arkansas Stat. Ann. § 27-2502(c)(1)(d) Unconstitutional.

As noted above, the relevant portion of the Arkansas Long-Arm Statute provides without exception that a foreign defendant is subject to jurisdiction within Arkansas providing that this defendant receives substantial revenue from Arkansas sales, and commits a tortious act outside of the state resulting in injury in Arkansas. The most startling factor of the majority opinion is that the Court specifically found that both of the above prerequisites had been met. There simply is no question that the actions of Weissenfels in mislabeling substandard Yugoslavian chain, and reselling it as its own high quality Italian chain at an inflated price is a tortious act. None of the Justices disagreed with the proposition that Weissenfels systematically received substantial revenue from Arkansas sales. The fact of advertisement and solicitation by Fehr on behalf of Weissenfels as authorized and to the latter's direct benefit is undisputed.

The effect of the majority opinion was succinctly recognized in Judge Lay's dissenting opinion at Page A-14, wherein he noted:

> The majority's decision in effect declares unconstitutional that portion of the Arkansas Statute which provides for service of process on a defendant that reached financial gain from the distribution of his product in the state. This decision should create great concern to the vast majority of states that have sought to expand their long-arm statutes to protect their citizens from defective products manufactured and distributed in their states by foreign corporations.

It is certainly arguable that Petitioner would have a right of direct appeal to this Court from the majority opinion as a state statute was in effect held unconstitutional. However, since the majority opinion in effect reached this result, but refused to express it in those terms, Petitioners have instead asked for the remedy of certiorari.

The majority's opinion was based upon what is respectfully submitted was an erroneous interpretation of the decisions of this Court in *Hanson v. Denckla*, 357 U.S. 235, 2 L.Ed. 2d 1283, 78 S.Ct. 1228 (1958), and *International Shoe Company v. State of Washington*, 326 U.S. 310, 90 L.Ed. 95, 66 S.Ct. 154. It is submitted by Petitioner that the purposeful receiving of revenue from a forum state, combined with a tortious act outside of the state, constitutes a sufficient "minimum contact" and likewise a purposeful availment of conducting activities within the forum state to satisfy the requirements of the due process clause, and is clearly not violative of the decisions reached in either of the aforementioned cases.

In any event, the fact that the majority opinion in effect declares a state statute unconstitutional under the circumstances

of the case, is, in itself, a sufficient ground for the granting of certiorari, apart from the other factors previously relied upon in Petitioner's brief.

CONCLUSION

Rule 19 of this Court states that in deciding whether a Writ of Certiorari is proper, the following are some of the factors which will be taken into consideration:

> Where a Court of Appeals has rendered a decision in conflict with the decisions of other courts of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of Federal law which has not been, but should be, settled by this Court . . ."

It is respectfully submitted by Petitioners that the majority opinion of the Eighth Circuit Court of Appeals meets all of the above criteria. Likewise, although not expressly so stating, it is clear that the majority decision in effect holds a state statute unconstitutional. Under these circumstances, it is respectfully submitted by Petitioner that this is a proper case for certiorari. This is especially so in an era where the presence of goods manufactured in foreign countries, in the stream of interstate commerce, is becoming an everyday fact of life. If such foreign manufacturers are to be allowed, unlike American manufacturers, to in effect insulate themselves from products liability through the simple device of using an independent distributor, and if the citizens of the states are to be denied an effective remedy against such foreign entities, such a proposition should be clearly enunciated by this Court on a question of such important and far-reaching consequences.

The Eighth Circuit has unanimously recognized that a substantial constitutional question is involved by staying all proceedings at the District Court level pending Fehr's petition for certiorari since under its local rules such stays are granted only where good cause exists and a "substantial question is to be presented to the Supreme Court" (Rule 18).

Finally, it should be noted that of the nine separate judges who have been involved in this cause, five (including the trial court and U.S. District Judge Albert Shatz who sat by designation on the original three judge panel) have disagreed with the contentions of Weissenfels.

Petitioners, therefore, respectfully pray for the issuance of a Writ of Certiorari to the Eighth Circuit Court of Appeals.

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APPENDIX

APPENDIX A

En Banc Opinion of Circuit Court

United States Court of Appeals
for the Eighth Circuit

No. 77-1818

Woodrow Hutson,
Appellee,

v.

Fehr Brothers, Inc.,
Appellee.

Acciaierie Weissenfels,
Appellant.

* * *

John David Epperson,
Appellee,

v.

Fehr Brothers, Inc.,
Appellee,

Acciaierie Weissenfels,
Appellant.

Appeal from the United States District Court for the Western District of Arkansas.

Submitted: June 12, 1978

Filed: August 18, 1978

Before GIBSON, Chief Judge; LAY, HEANEY, BRIGHT, ROSS, STEPHENSON, and HENLEY, Circuit Judges, *En Banc*.

BRIGHT, Circuit Judge.

This permissive interlocutory appeal stems from the attempted exercise of *in personam* jurisdiction over a foreign corporation, by substituted service, under the Arkansas long-arm statute. Ark. Stat. Ann. § 27-2502(C)(1)(d) (Supp. 1975). The United States District Court for the Western District of Arkansas denied defendant-appellant Acciaierie Weissenfels' motion to dismiss two suits seeking damages for alleged bodily injuries for lack of *in personam* jurisdiction. The court then made the appropriate 28 U.S.C. § 1292(b) certification upon motion of Weissenfels and we permitted the appeal to be taken. We reverse the district court.

I

Plaintiffs Woodrow Hutson and John David Epperson, residents of Arkansas, filed separate related product liability actions seeking damages for injuries allegedly sustained on May 9, 1976. Named as defendants in these actions were Weissenfels, an Italian corporation with its principal place of business in Fusine, Valromana, Italy, and Fehr Brothers, Inc., a New York corporation with its principal place of business in New York City, New York.

In their complaints, plaintiffs contend that they were injured while working at the Murfreesboro Lumber Company in Murfreesboro, Arkansas, when a three-eighths inch chain broke. Murfreesboro Lumber Company purchased the chain from the Carroll Building and Apliance Company in Murfreesboro, Arkansas. The open barrel from which the chain was purchased allegedly bore the label FAIRLINE, the trademark used by defendant Fehr Brothers, Inc. It was also stamped "Yugoslavia."

Plaintiffs allege a complicated series of transactions linking Weissenfels to the chain in question. They claim that the chain was manufactured in Yugoslavia by some unknown manufac-

turer. Weissenfels purchased the chain and then packaged and sold it as its own product to Frank Fehr & Co., a British corporation with the exclusive right to sell Weissenfels' products in North America. Frank Fehr & Co. resold the chain to its American subsidiary, Fehr Brothers, Inc. Fehr Brothers then repackaged the chain under its own brand name, FAIRLINE, and resold it. Ultimately, the chain reached the retailer, Carroll Building and Appliance Company, who sold the chain to the plaintiffs' employer, Murfreesboro Lumber Company. The plaintiffs also alleged in their complaints that between October 1, 1972, and September 30, 1976, Fehr Brothers, Inc., sold Weissenfels chains in Arkansas for a total revenue of more than $74,000.

In its reply, Weissenfels denies that it purchased or packaged this particular chain as its own product. Because this case is before us on appeal from a motion to dismiss for lack of personal jurisdiction, however, we must assume that the facts supporting jurisdiction in plaintiffs' complaints are true. This permits us to accept as true plaintiffs' allegation that Weissenfels was one link in the series of commercial transactions that brought the chain to Arkansas.

II

This appeal presents the following two issues: whether the Arkansas long-arm statute authorizes the exercise of jurisdiction over Weissenfels and, if so, whether the district court's exercise of *in personam* jurisdiction over Weissenfels would violate the due process clause of the fourteenth amendment.

A

The relevant provision of the Arkansas long-arm statute, Ark. Stat. Ann. § 27-2502(C)(1)(d), states:

1. A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a (cause of action) (claim for relief) arising from the person's

* * *

(d) causing tortious injury in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct in this State or derives substantial revenue from goods consumed or services used in this State[.]

The statute establishes two requirements pertinent to this case: (1) that Weissenfels' acts or omissions outside of the state caused the tortious injury in Arkansas; (2) that Weissenfels derived "substantial revenue" from the sale of its chains in Arkansas.

The first of these requirements presents no great difficulty for, as we have already noted, we must accept as true the allegations in plaintiffs' complaints that the chain was repackaged and resold by Weissenfels. Under a products liability theory, the seller as well as manufacturer may be liable for injuries caused by defective products.

The revenue issue is more troublesome, however, because plaintiffs pleaded no facts indicating how much revenue is derived by Weissenfels from Arkansas sales. Instead, plaintiffs merely alleged that Fehr Brothers, the American subsidiary of Frank Fehr & Co., the British company, derived $74,551.35 in revenue from Arkansas sales over a four-year period. Because Weissenfels is at least two steps removed from Fehr Brothers in the distribution chain, it is safe to assume that the $74,551.35 figure is diminished. Under applicable Arkansas case law, however, the revenue requirement is met. For example, the Arkansas Supreme Court in *Pennsalt Chemical Corp. v. Crown Cork & Seal Co.*, 244 Ark. 638, 426 S.W.2d 417,

419 (Ark. 1968), held sales over a three-year period ranging from a high of $1,987.78 to a low of $123.60 to be "substantial revenue" under this statute.

Accordingly, Arkansas state law permits *in personam* jurisdiction over Weissenfels in this case.

B

We must still determine whether the exercise of *in personam* jurisdiction over this foreign corporation would violate its right to due process under the fourteenth amendment.

In order to satisfy due process in cases in which service of process is accomplished by means of a long-arm statute, the foreign corporation must "have certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). In addition, "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State * * *." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

The Supreme Court last term in *Shaffer v. Heitner*, 433 U.S. 186 (1977), discussed the applicable due process test for the exercise of personal jurisdiction over a foreign corporation:

> Thus, the inquiry into the State's jurisdiction over a foreign corporation appropriately focused not on whether the corporation was "present" but on whether there have been
>
> > "such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there." * * *

Mechanical or quantitative evaluations of the defendant's activities in the forum could not resolve the question of reasonableness:

> "Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations." • • •
>
> Thus, the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of *Pennoyer* rest, became the central concern of the inquiry into personal jurisdiction. [*Shaffer v. Heitner*, 433 U.S. 186, 203-04 (1977), *quoting International Shoe Co. v. Washington*, 326 U.S. 310 (1945) (footnote omitted).]

The courts interpreting the *International Shoe* "minimum contacts"—fairness doctrine on occasion have tended to expand jurisdiction so as to include any corporation that

> introduces its product into the stream of interstate commerce if it had reason to know or expect that its product would be brought into the state where the injury occurred • • •. [*Eyerly Aircraft Co. v. Killian*, 414 F.2d 591, 596 (5th Cir. 1969).]

Indeed, the court in *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (Ill. 1961), noted that jurisdiction is presumed unless the *defendant* can prove that the presence of the product in the forum state was an unforeseeable event. Nonetheless, the requirement of minimum contacts mandates some degree of concern for the interest of the nonresident defendant.

In this case, we cannot agree with the district court's conclusion that exercise of *in personam* jurisdiction over Weissenfels is consistent with constitutional due process requirements established by the Supreme Court in *International Shoe* and reiterated in *Shaffer*. The determination, for example, of whether the "minimum contacts" test of *International Shoe* is met is not an easy task. Indeed, as the Supreme Court recently emphasized:

> [A]n essential criterion in all cases is whether the "quality and nature" of the defendant's activity is such that it is "reasonable" and "fair" to require him to conduct his defense in that State. *International Shoe Co. v. Washington*, [326 U.S. 310, 316-17, 319 (1945).] • • •
>
> Like any standard that requires a determination of "reasonableness," the "minimum contacts" test of *International Shoe* is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present. *Hanson v. Denckla*, 357 U.S. 235, 246 (1958). [*Kulko v. Superior Court of California*, 98 S.Ct. 1690, 1697 (1978).]

In this case we are compelled to reach the conclusion that the requisite "affiliating circumstances" are not present. The connection between Arkansas and Weissenfels is an attenuated one.

Weissenfels' contacts with Arkansas consist only of the fortuitous introduction of Weissenfels products into the forum state through the decision of Frank Fehr & Co., a British company. Weissenfels neither manufactured the defective chain nor sold or marketed it in the United States. Weissenfels' only apparent connection with the chain was that at one time it repacked and resold it to Frank Fehr & Co. These are insufficient "minimal contacts" with the forum state for Arkansas to exercise juris-

diction over Weissenfels. Weissenfels did not consciously solicit or purposely avail itself of the privilege to conduct business in the forum state, as *Hanson* requires for the exercise of jurisdiction. 357 U.S. at 253. The Fehr Co. exercises control over the selection of the customers and other marketing decisions relating to the sales of the Weissenfels products which it purchases. We recognize that the State of Arkansas has a strong interest in providing a forum for its residents who are injured by defective products of foreign corporations[1] and that Weissenfels did repackage and resell the chain to Frank Fehr & Co. Nevertheless, *in personam* jurisdiction simply cannot rest on such a frail foundation.

Furthermore, we realize that the question of jurisdiction, which is relatively more concerned with fairness, is distinct from that of venue, which is more concerned with convenience. "Nevertheless, whatever will support the plea [of forum non conveniens] will excuse the corporation from defending the suit * * *," and can be considered in determining whether jurisdiction should be exercised. *Latimer v. S/A Industries Reunidas F. Matarazzo*, 175 F.2d 184, 186 (2d Cir. 1949), *cert. denied*, 338 U.S. 867 (1949).

Various considerations usually associated with forum convenience are pertinent to whether Weissenfels should be subject to jurisdiction in Arkansas. Weissenfels is burdened substantially by having to defend this lawsuit. It must hire United States counsel and support personnel and presumably transport its witnesses to Arkansas from Italy in the event of trial. Naturally, it will be strongly tempted to settle, even if it believes it is not liable, because of the tremendous expense of trying the lawsuit, an expense that bears far more heavily on it than on the other parties.

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[1] We further note that plaintiffs in this action do not suffer from a dearth of available defendants. Arkansas has exercised jurisdiction over the packager and distributor, Fehr, and can exercise jurisdiction over the retailer, Carroll Building and Appliance Company.

We, therefore, conclude that Arkansas' exercise of jurisdiction over Weissenfels would offend the "traditional notions of fair play and substantial justice" standard established in *International Shoe*.

We reverse and remand, directing that Weissenfels be dismissed as a defendant.

STEPHENSON, Circuit Judge, with whom LAY and HEANEY, Circuit Judges, join, dissenting

The dispositive issue in this case is whether Acciaierie Weissenfels (AW) is insulated from in personam jurisdiction under the due process clause of the Fourteenth Amendment in a product liability case because it used an intermediary in the sale and distribution of an alleged faulty chain causing plaintiffs' injuries. AW purchased the chain in question from an unknown Yugoslavian firm and then packaged and sold it as its own product[1] to Frank Fehr & Co., a British corporation with the exclusive right to sell AW's products in North America.

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[1] It was so alleged by plaintiffs and assumed to be true under the motion to dismiss. *See* majority opinion, *supra*, slip op. at 3. We also note that Fehr Brothers, Inc. in response to an interrogatory admitted that periodically since 1972 it had distributed to Arkansas customers advertising brochures showing AW products. A sample first page thereof is attached to its brief and reads as follows:

> ACCIAIERIE WEISSENFELS has been producing chains for over 500 years and is a pioneer in the technological development of chain. Our factory is equipped with the most modern chain welding and heat treating equipment available and staffed by highly skilled workmen to whom chain making is a family tradition.
>
> We welcome your inquiries for High Test and Special Alloy Steel Chains.
>
> Exclusive Agents for U.S.A.
>
> FEHR BROS. MANUFACTURERS, Inc. 110, Wall Street
> NEW YORK, N. Y.—10005
> FAIRLINE [trademark]

Frank Fehr & Co. resold the chain to is American subsidiary, Fehr Brothers, Inc.

The district court in its memorandum opinion denying AW's motion to dismiss noted that AW relied on language in *Hanson v. Denckla*, 357 U.S. 235, 253 (1958), which was cited with approval in *Shaffer v. Heitner*, 433 U.S. 186, 216 (1977), to the effect that a defendant must have "purposely avail[ed] itself of the privilage of conducting activities within the forum State" to subject itself to personal jurisdiction. The district court then stated:

> We hold that on the alleged facts of this case, the phrase "purposefully avails itself of the privilege of conducting activities" includes the actions of AW. We reach this result because AW's product which it allegedly packaged and warranted as its own is the subject matter of this litigation. In delivering the chain to Frank Fehr and Company, AW must have anticipated that the chain would be distributed in all fifty states of the United States and it must have foreseen that its product would be sold within Arkansas.
>
> AW was not the entity which consummated the sale within Arkansas. If this fact were decisive and if a foreseeability test for "purposely avails itself" were not applied in products liability cases, an injured person would almost always be left with no direct recourse against the manufacturer of the product causing his injury.

The courts have recognized that direct contact with the forum state is not essential to the exercise of personal jurisdiction. So long as a manufacturer or distributor can reasonably anticipate that its products will be sold and distributed in a given state and through their use injury occur, it can be held to account through in personam jurisdiction. In *Honeywell, Inc. v. Metz Apparatewerke*, 509 F.2d 1137, 1144 (7th Cir. 1975), the court of appeals made it abundantly clear that a court must look to the economic realities of the case.

> To the extent that a corporate defendant avails itself of the privilege of conducting activities in a state, it enjoys the benefits and protection of the laws of that state, *International Shoe, supra*, 326 U.S. at 319, 66 S.Ct. 154, and we believe that Metz has done so by injecting its products into the Illinois marketplace. Metz urges that its activity does not fit this mold simply because its products are sold to EPOI "f.o.b. German seaport or German border," Appellee's Brief at 11, but that position is not, of course, a realistic evaluation of the nature and quality of Metz's business affairs, viewed in light of the arrangement with EPOI.
>
> Direct contact with the forum state is not essential to the exercise of personal jurisdiction. Metz may not have physically entered the state of Illinois, but it placed its flash devices in the stream of commerce under such circumstances that it should reasonably have anticipated that injury through infringement would occur there. [Citations omitted.] We look to the economic and commercial realities of this case, and in our view, it is not within the contemplation of the concepts of fairness and due process to allow a wrongdoing manufacturer to insulate himself from the long arm of the courts by using an intermediary or by professing ignorance of the ultimate destination of his products.

It would be fundamentally unfair to allow a foreign manufacturer to insulate itself from the jurisdiction of the court through the use of an exclusive distributor. *Hetrick v. American Honda Motor Co.*, 429 F. Supp. 116, 118-19 (D. Neb. 1976).

It is not essential to personal jurisdiction that AW knew that its product was being sold in Arkansas. It is enough that AW could reasonably anticipate that its product sold through an ex-

clusive distributorship in North America might ultimately be used in any state of the United States and it would be held to answer in any such state for the damage the product caused. The manufacturer cannot deny the substantial interest of the injured person's state in providing a convenient forum for its citizens.

A corporation is answerable where it introduces its product into the stream of interstate commerce if it has reason to know or expect that its product would be brought into the state where the injury occurred. *Eyerly Aircraft Co. v. Killian*, 414 F.2d 591, 595-96 (5th Cir. 1969). *Accord, Coulter v. Sears, Roebuck & Co.*, 426 F.2d 1350 (5th Cir. 1970); *William v. Vick Chemical Co.*, 279 F. Supp. 833, 837 (S.D. Iowa 1967). Where the activities complained of create a substantial risk of injury in the forum state, direct contact with that state is not essential. *Jones Enterprises, Inc. v. Atlas Service Corp.*, 442 F.2d 1136, 1140 (9th Cir. 1971); *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 F.2d 231, 235 (9th Cir. 1969).

The Supreme Court recognized that a single transaction is a sufficient contact for purposes of due process if it gives rise to the liability asserted in the suit. *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957). The Court noted the trend "toward expanding the permissible scope of state jurisdiction over foreign corporations and other non-residents" is in part attributable to the transformation of our national economy over the years. *Id.* at 222.

> Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.

Id. at 222-23. *Compare Kulko v. Superior Court of California*, 98 S.Ct. 1690, 1699, 1701-02 (1978), where the Supreme Court noted that the transaction giving rise to the claim for personal jurisdiction was not a commercial transaction involving an economic benefit to the party that would make fair the assertion of the state's judicial jurisdiction.

A state has a legitimate interest in providing a meaningful forum for its citizens who have suffered damages as a result of faulty products being shipped into the state by foreign corporations. In *Hardy v. Pioneer Parachute Co.*, 531 F.2d 193, 195 (4th Cir. 1976), the court stated:

> Modern transportation, communication, and the national flow of commerce have contributed to the recognition that states have a legitimate interest in providing means for their citizens to seek redress against foreign corporations that ship allegedly defective products into the state. No unconstitutional burden is imposed on a foreign corporation by requiring it to defend a suit in a forum located in a state where it has advertised and sold a product whose use gave rise to the cause of action.

We recognize that the inconvenience resulting to a foreign defendant in defending itself should not be ignored but where the defendant benefits from economic activity within the forum state and the cause of action arises out of such activity it is not unfair to hold the defendant accountable in the courts of the forum. *Honeywell, Inc. v. Metz Apparatewerke, supra*, 509 F. 2d at 1145; *Hetrick v. American Honda Motor Co., supra*, 429 F. Supp. at 119.

In summary, we are satisfied that AW has purposefully availed itself of the privilege of conducting activities within the forum state as required by *Hanson v. Denckla, supra*, 357 U.S. at 253. It is enough, as demonstrated by the record, that AW had reason

to know that its products, traveling through an exclusive distributorship, could be sold in any state of the United States. Under the circumstances, we do not believe it is unreasonable to require Acciaierie Weissenfels to defend this product liability action in Arkansas. It is fundamentally unfair to allow a foreign manufacturer to insulate itself from the jurisdiction of the courts by use of an exclusive distributorship.

LAY, Circuit Judge, dissenting, in which HEANEY, Circuit Judge, joins.

I fully concur in Judge Stephenson's well-reasoned dissenting opinion. I wish to make an additional observation. If this action were pending in the state court it is clear under the Arkansas statute, Ark. Stat. Ann. § 27-2502(C)(1)(d)[1] that the Supreme Court of Arkansas would uphold the service of process on defendant Weissenfels. *See Nix v. Dunavant*, 249 Ark. 641, 460 S.W.2d 762, 764-65 (1970); *International Harvester Co. v. Hendrickson Mfg. Co.*, 249 Ark. 298, 459 S.W.2d 62, 64-65 (1970); *Pennsalt Chemical Corp. v. Crown Cork & Seal Co.*, 244 Ark. 638, 426 S.W.2d 417, 419-22 (1968). The majority's decision in effect declares unconstitutional that portion of the Arkansas statute which provides for service of process on a defendant that reaps financial gain from the distribution of its product in the state. This decision should create great concern to the vast majority of states that have sought to expand their long arm statutes to protect their citizens from defective products manufactured and distributed in their states by foreign corporations.

For many years state legislation restricted service of process to persons who were actively doing business in the state or who

[1] Arkansas long arm statute is identical to the Uniform Interstate & International Procedure Act § 1.03.

were otherwise physically present in the state. *See Developments in the Law—State-Court Jurisdiction*, 73 Harv. L.Rev. 909, 917 (1960). As the nation's industrialization rapidly expanded the practical realization grew that injured citizens were denied a convenient judicial forum to redress the tortious effect of foreign products shipped into the state. Following the decisions in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) and its progeny, states began to amend their long arm statutes to expand their in personam jurisdiction over foreign corporations. These statutes were upheld as long as the exercise of jurisdiction did not offend traditional notions of fair play and substantial justice. Manufacturers were no longer allowed to disassociate themselves from their defective products shipped to distant points. *See generally*, Note, *In Personam Jurisdiction Over Nonresident Manufacturers in Product Liability Actions*, 63 Mich. L.Rev. 1028 (1965). Long arm statutes providing jurisdiction over a foreign corporation who committed a single tortious act have long withstood constitutional challenge.[2] I am aware of no other federal or state decision which is in accord with the restrictive holding set out today.

It is somewhat surprising at this late date a federal court questions the efficacy of such legislation. Our holding today unduly encroaches upon a state's prerogative to provide its citizens a convenient avenue of recourse against a foreign tortfeasor. The majority circumvents this argument by saying that

[2] *See e.g., Sells v. International Harvester Co.*, 513 F.2d 762, 763 (5th Cir. 1975), *cert. denied*, 424 U.S. 934 (1976); *Dawkins v. White Products Corp.*, 443 F.2d 589, 590-94 (5th Cir. 1971); *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761, 762-66 (1961); *Andersen v. National Presto Industries, Inc.*, 257 Iowa 911, 135 N.W.2d 639, 640-43 (1965); *Ehlers v. United States Heating & Cooling Mfg. Corp.*, 267 Minn. 56, 124 N.W.2d 824, 826-27 (1963). *Cf. Aftanase v. Economy Baler Co.*, 343 F.2d 187, 197 (8th Cir. 1965) (upheld service on foreign corporation stating that more than sufficient minimum contacts were present when injury resulted from defective product shipped directly into state).

plaintiffs "do not suffer from a dearth of available defendants." This offhand dismissal overlooks the sound judicial policy of encouraging the settlement of all claims arising out of the same core of operative facts in a single lawsuit.

The majority decision is a giant leap backward in the law.

A true copy.

Attest:

Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX B

Original Opinion of Circuit Court

United States Court of Appeals
for the Eighth Circuit

No. 77-1818

Woodrew Hutson, John David Epperson, Fehr Brothers, Inc., Appellees,

v.

Acciaierie Weissenfels, Appellant.

Appeal from the United States District Court for the Western District of Arkansas.

Submitted: December 16, 1977

Filed: March 22, 1978

Before BRIGHT and STEPHENSON, Circuit Judges, and SCHATZ,* District Judge.

STEPHENSON, Circuit Judge.

This permissive interlocutory appeal stems from the attempted exercise of in personam jurisdiction over a foreign corporation, by substituted service, under the Arkansas long-arm statute.

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* The Honorable Albert G. Schatz, United States District Judge for the District of Nebraska, sitting by designation.

Ark. Stat. Annot. § 27-2502(C)(1)(d) (Supp. 1975). The district court[1] denied defendant Acciaierie Weissenfels' (Weissenfels) motion to dismiss for lack of in personam jurisdiction two complaints filed in the United States District Court for the Western District of Arkansas, Texarkana Division. The court made the appropriate section 1292(b) certification upon motion of Weissenfels. We affirm.

Plaintiffs Woodrew Hutson and John David Epperson, residents of Arkansas, filed separate related product liability actions seeking damages for injuries allegedly sustained on May 9, 1976, when a chain broke at the Murfreesboro Lumber Company in Murfreesboro, Arkansas. Named as defendants in these actions were Weissenfels, an Italian corporation with its principal place of business in Fusine, Valromana, Italy, and Fehr Brothers, Inc., a New York corporation with its principal place of business in New York City, New York. Weissenfels is a manufacturer of various types of industrial and commercial chain. At all times relevant to this action Weissenfels had a sales agreement with Frank Fehr and Co., Ltd., a British corporation, granting it the exclusive right to sell products manufactured by Weissenfels in certain specified areas, including North America.

The British corporation sold Weissenfels chain throughout the United States by means of its American subsidiary, Fehr Brothers, Inc. The chain was marketed by Fehr under its own brand name, FAIRLINE. Between October 1, 1972, and September 30, 1976, Fehr Brothers, Inc. sold Weissenfels chains in Arkansas for a total of almost $75,000.

Murfreesboro Lumber Company purchased the particular chain in question from the Carroll Building and Appliance Company in Murfreesboro, Arkansas. The open barrel from which the chain was purchased bore the label FAIRLINE, the trade-

[1] The Honorable Paul X Williams, United States District Judge for the Western District of Arkansas.

mark used by defendant Fehr Brothers, Inc. The chain was stamped "Yugoslavia."

In their briefs plaintiffs contend that the chain involved in this litigation was manufactured by a Yugoslavian manufacturer and packaged and sold by Weissenfels as its product. Defendant denies that it purchased or packaged this particular chain as its own product.

The following two issues are presented in this appeal: does the Arkansas long-arm statute authorize the exercise of jurisdiction over Weissenfels, and, if so, would the district court's exercise of in personam jurisdiction over Weissenfels violate due process?

The relevant provision of the Arkansas long-arm staute, Ark. Stat. Annot. § 27-*2502*(C)(1)(d), states:

> 1. A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a (cause of action) (claim for relief) arising from the person's
>
> * * *
>
> (d) causing tortious injury in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct in this State or derives substantial revenue from goods consumed or services used in this State;

Plaintiffs allege Weissenfels' acts or omissions outside the state caused tortious injury to them in Arkansas. Plaintiffs further contend that Weissenfels derived substanial revenue from the sale of its chain in Arkansas and therefore falls within the statute. Defendant Weissenfels contends that there was no evidence concerning the amount of revenue derived by Weissenfels from its goods consumed in Arkansas. There was evidence, how-

ever, that Fehr's sales of Weissenfels' products to Arkansas customers over a four-year period totaled $74,551.35. After a review of the Arkansas Supreme Court's interpretation of this statute we are convinced that the district court properly inferred from the evidence that Weissenfels derived "substantial revenues" under the meaning of the statute. For example, the Arkansas Supreme Court in *Pennsalt Chemical Corp. v. Crown Cork & Seal Co.*, 426 S.W.2d 417, 419 (Ark. 1968), held sales over a three-year period ranging from a high of $1,987.78 to a low of $123.60 to be "substantial revenue" under this statute.

Even though defendant is amenable to service of process under the Arkansas long-arm statute, we must still determine whether the exercise of in personam jurisdiction over this foreign corporation would violate its right to due process under the Fourteenth Amendment.

In order to satisfy due process where service of process is accomplished by means of a long-arm statute, the foreign corporation must "have certain minimum contacts with [the state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. State of Washington*, 326 U.S. 310, 316 (1945). In addition, "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State * * *." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

In determining whether there are sufficient minimum contacts to satisfy the due process requirement in exercising in personam jurisdiction over a nonresident defendant, the following factors are operative: (1) the nature and quality of the contacts with the forum state; (2) the quantity of contacts with the forum state; (3) the relation of the cause of action to the contacts; (4) the interest of the forum state in providing a forum for its residents; and (5) the convenience of the parties.

Electro-Craft Corp. v. Maxwell Electronics Corp., 417 F.2d 365, 368 (8th Cir. 1969); *Aftanase v. Economy Baler Co.*, 343 F.2d 187, 197 (8th Cir. 1965).

Admittedly the quantity of Weissenfels' contacts with the forum state are few. These contacts consist of Weissenfels' purposeful introduction of its product into the state of Arkansas through an exclusive distributorship agreement with Fehr and the revenue it thereby received. Furthermore, this revenue was substantial in nature and was produced, not from a one-time sale, but from the continuous and systematic sale of Weissenfels chain into the forum state over a four-year period.

The third factor we consider is the relation of the cause of action to these contacts. If the cause of action arises from the defendant's contacts with the forum state it is more reasonable to allow the exercise of in personam jurisdiction over the defendant. Here the plaintiffs' personal injuries, as alleged in the pleadings, arose from the very product which Weissenfels introduced into the forum state through Fehr, its exclusive distributor for the United States. We consider this factor to be significant. *See Aftanase v. Economy Baler Co., supra*, 343 F.2d at 196 n.2. As has been previously stated, Weissenfels' products consist of industrial and commercial chain. Due to the various uses to which industrial chain is put, it is quite foreseeable that an injury could occur if the chain was defectively manufactured and consequently broke.

The last two factors also weigh in favor of finding sufficient minimum contacts with the forum state. It cannot be denied that the state of Arkansas has a great interest in providing a forum for its residents who are injured by defective products of foreign corporations. In addition the evidence of the facts surrounding the accident is in Arkansas. The medical evidence of the plaintiffs' damages is in Arkansas. And finally, the injured plaintiffs are in Arkansas. This we compare to the rela-

tively small inconvenience to an international corporation in defending this suit in Arkansas. *See McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957). Accordingly, we find that there are sufficient minimum contacts to satisfy the due process requirements as set out in *International Shoe Co. v. State of Washington, supra.* However, this does not end our inquiry.

Weissenfels strongly argues that it has not purposefully availed itself of the privilege of conducting activities within the forum state as required by *Hanson v. Denckla, supra,* 357 U.S. at 253. Specifically, Weissenfels contends that since Fehr exercised control over the selection of the customers for Weissenfels' products, there is no basis for finding "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla, supra,* 357 U.S. at 253.

We believe it is not determinative whether Weissenfels knew that its product was being sold in Arkansas. To satisfy the requirement set out in *Hanson v. Denckla, supra,* it is enough that the defendant had reason to know that its products, traveling through an exclusive distributorship, could be sold in any state of the United States. *Eyerly Aircraft Co. v. Killian,* 414 F.2d 591, 595-96 (5th Cir. 1969); *Hetrick v. American Honda Motor Co.*, 429 F. Supp. 116, 118 (D. Neb. 1976); *Williams v. Vick Chemical Co.*, 279 F. Supp. 833, 837 (S.D. Iowa, 1967). *But see Velandra v. Regie Nationale Des Usines Renault,* 336 F.2d 292 (6th Cir. 1964). Weissenfels knowingly placed its products into the stream of commerce giving Fehr the exclusive right to distribute its products in any state in the United States. To allow Weissenfels to thereby insulate itself from a product liability action in a state where it derived substantial revenue from the sale of its products would be unreasonable. Under the circumstances, we do not believe it is unreasonable to require Weissenfels to defend this product liability action in Arkansas. The requirements of due process are satisfied and, accordingly, we affirm.[2]

Affirmed.

BRIGHT, Circuit Judge, dissenting.

I dissent. No doubt the court's decision accords with the Arkansas Supreme Court's interpretation of the state's long-arm statute.[3] *See, e.g., Pennsalt Chemical Corp. v. Crown Cork & Seal Co.*, 244 Ark. 638, 426 S.W.2d 417 (1968) (*in personam* jurisdiction exists over out-of-state manufacturer who, although carrying on no business activities in Arkansas, sold product to independent brokers who derived revenues of $1,987 in 1960, $540 in 1961, and $123 during part of 1962). The majority's view is also in harmony with the trend of recent state court and

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[2] The briefs indicate some dispute as to Weissenfels' relationship to the product in question. The record is not sufficiently clear for us to consider any claim in this regard. If there is a bona fide dispute the district court can give the matter further consideration. *See Block Industries v. DHJ Industries, Inc.*, 495 F.2d 256 (8th Cir. 1974).

[3] Arkansas Stat. Ann. § 27-2502.C.1(d) (Supp. 1973) provides that:

> 1. A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a (cause of action) (claim for relief) arising from the person's * * *
>
> (d) causing tortious injury in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct in this State or derives substantial revenue from goods consumed or services used in this State * * *.

The statute sets out two requirements that must be fulfilled before personal jurisdiction is appropriate: (1) the defendant must have caused the tortious injury within Arkansas; (2) the defendant must either do or solicit business in the state or derive substantial revenue from business activity within the state. Weissenfels contests both of these elements, claiming (1) that it did not manufacture, package under its own name, or have any connection with the chain that caused the injury; (2) the fact that codefendant Fehr Brothers de-

federal circuit court interpretations of constitutional due process requirements established by the United States Supreme Court.[4] Nevertheless, in my view, the decision abrogates the requirement of fundamental fairness contained within the due process clause and contravenes the Supreme Court mandate that personal jurisdiction over an out-of-state defendant may be acquired only if the defendant has such "minimum contacts" with the state so that maintenance of the suit will not offend "traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), *quoting Milliken v. Meyer*, 311 U.S. 457, 463 (1940).

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rived also $75,000 in revenue from sales of Weissenfels' chains in Arkansas in no way demonstrates that Weissenfels derived substantial revenue from Arkansas sales. Both the district court and the majority gloss over or ignore these objections. Since this case is before us on a motion to dismiss for lack of personal jurisdiction, however, we must assume that the facts supporting jurisdiction in plaintiffs' complaints are true. This permits us to accept as true plaintiffs' allegations that the chain was made by Weissenfels. The revenue issue is more difficult, however, because plaintiff pleaded no facts indicating how much revenue Weissenfels derived from Arkansas sales. The majority believes that it is proper to "infer" from the fact that Fehr received $74,511.35 in revenue from Arkansas over a four-year period that Weissenfels derived "substantial revenue" within the meaning of the statute. Although I am somewhat uncomfortable with the practice of "inferring" a necessary jurisdictional fact I do recognize that because this case is before the court on a motion for dismissal for lack of personal jurisdiction, the court may liberally infer the existence of jurisdictional facts in order to avoid a dismissal.

[4] *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961), initiated this trend. The case is concisely summarized and analyzed in *Phillips v. Anchor Hocking Glass Corp.*, 100 Ariz. 251, 413 P.2d 732 (1966):

> In Gray v. American Radiator & Standard Sanitary Corp., 22 Ill.2d 432, 176 N.E.2d 761 the defendant challenging jurisdiction had manufactured a safety valve which it sold outside the jurisdiction to a radiator manufacturer. The radiator was in the state when it exploded injuring the plaintiff. The statute provided for jurisdiction over a nonresident defendant who committed a tortious act within the state. The court, analogizing to traditional conflict-of-law principles, reasoned that a tortious act is not committed until the injury occurs. Since the injury occurred in the state, the statute was satisfied

The link between Weissenfels and the chain that allegedly caused the injury is attenuated at best. The chain apparently was manufactured in Yugoslavia by some unknown manufacturer, and then, according to plaintiff,[5] was repackaged and sold as its own product by Weissenfels, an Italian corporation. Weissenfels does no direct business in the United States, but sells chains to Frank Fehr & Co., a British corporation, which in turn distributes the chain in North America through its American subsidiary, Fehr Brothers. Fehr repackages and sells the chain

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> and the defendant was subject to jurisdiction over his person. The court held that a single tortious act within the forum meets the "minimum contacts" requirement of International Shoe and satisfied traditional notions of fair play. The court next raised the issue of foreseeability in somewhat ambiguous terms. It first stated that the record failed to disclose whether the defendant did any business in the forum. Then the court said "it is a reasonable inference that (defendant's) commercial transactions, like those of other manufacturers, result in substantial use and consumption in this State" and that the safety valves were "presumably sold in contemplation of use here". 176 N.E.2d at 766. The court said that, "[a]s a general proposition, if a corporation elects to sell its products for ultimate use in another State, it is not unjust to hold it answerable there for any damage caused by defects in those products." 176 N.E.2d at 766. Finally, the court said "defendant does not claim that the present use of its product in the forum is an isolated instance." 176 N.E.2d at 766. Essentially, the court held that a nonresident defendant is amenable to personal jurisdiction where his defective product causes injury within the forum though he did not intentionally put this product there unless he, the defendant, proves that the presence of his product in the forum was an unforeseeable event.

More recently, the court in *Eyerly Aircraft Co. v. Killian*, 414 F. 2d 591, 596 (5th Cir. 1969), commented:

> The present trend is to * * * hold that a corporation is answerable where it introduces its product into the stream of interstate commerce if it had reason to know or expect that its product would be brought into the state where the injury occurred.

See also Coulter v. Sears, Roebuck and Co., 426 F.2d 1315, 1316 (5th Cir. 1970) ("The reservoir of state jurisdictional power over nonresidents has swollen tremendously in recent years.").

[5] Weissenfels disputes this point. *See* note 3 *supra*.

in the United States under its own brand name, FAIRLINE. Over a four-year period, $75,000 worth of FAIRLINE chain was sold in Arkansas. The chain that allegedly injured the plaintiffs was purchased by their employer, Murfreesboro Lumber Company, from the retail seller, Carroll Building and Appliance Company. Thus, the majority holds that personal jurisdiction exists over an Italian corporation that does not engage in business activity in the United States, and did not manufacture the product that allegedly caused the injury.

Weissenfels' role, if any, was limited to repackaging the chain under its own brand name and selling it abroad to a British corporation that marketed it in the United States, repackaged and renamed again as FAIRLINE. We have no indication of how much of the revenue derived from $75,000 in retail sales in Arkansas reached Weissenfels but, given the large number of intermediaries in this transaction, it is safe to assume not much.

The Supreme Court recently outlined the applicable due process test of the exercise of personal jurisdiction over a foreign corporation:

> Thus, the inquiry into the State's jurisdiction over a foreign corporation appropriately focused not on whether the corporation was "present" but on whether there have been
>
> > "such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there. *Id.*, at 317, 66 S.Ct., at 158.
>
> Mechanical or quantitative evaluations of the defendant's activities in the forum could not resolve the question of reasonableness:
>
> > "Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause

> to insure. That clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations." *Id.*, at 319, 66 S.Ct., at 160.
>
> Thus, the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of *Pennoyer* rest, became the central concern of the inquiry into personal jurisdiction.
>
> [*Shaffer v. Heitner*, 97 S.Ct. 2569, 2580 (1977), *quoting International Shoe Co. v. Washington*, 326 U.S. 310 (1945) (footnotes omitted).]

The trend among lower courts interpreting the *International Shoe* "minimum contacts"-fairness doctrine has been to expand jurisdiction so as to include any corporation that

> introduces its product into the stream of interstate commerce if it had reason to know or expect that its product would be brought into the state where the injury occurred * * *. [*Eyerly Aircraft Co. v. Killian*, 414 F.2d 591, 596 (5th Cir. 1969).]

Indeed, as one court has noted, jurisdiction is presumed unless the *defendant* can prove that the presence of the product in the forum state was an unforeseeable event. *Phillips v. Anchor Hocking Glass Corp.*, 100 Ariz. 251, 413 P.2d 732, 736 (1966).

The impetus behind this trend has been a concern with past deference to what was fair to the defendant, at the expense of the plaintiff. In my view this is a laudable goal, but the pendulum may have swung too far to the plaintiffs' side. I cannot believe, for example, that exercise of personal jurisdiction over Weissenfels in this case is consistent with constitutional due process requirements established by the Supreme Court in *International Shoe* and recently reiterated in *Shaffer*. Both the

quality and quantity of Weissenfels' contacts with Arkansas are minimal; it neither manufactured the chain nor sold or marketed it in the United States. There is simply no evidence that, indirectly, it derived "substantial revenue" from Arkansas sales. In short, the connection between Weissenfels and Arkansas is gossamer.

Moreover, the plaintiffs in this action do not suffer from a dearth of available defendants. Both the retailer, Carroll Build- and Appliance Company, and the packager and distributor, Fehr, would be logical entities to sue, and indeed, Fehr is a co-defendant in this action. There is no reason to believe that the plaintiffs would suffer from the omission of Weissenfels from the list of defendants.

On the other hand, Weissenfels is burdened substantially by having to defend this lawsuit. It must hire United States' counsel and support personnel, and presumably transport its witnesses to Arkansas from Italy in the event of trial. Naturally, it will be strongly tempted to settle, even if it knows it is not liable, because of the tremendous expense of trying the lawsuit, an expense that bears far more heavily on it than on the other parties.

Ironically, this expense will ultimately be borne by the very individuals that free-wheeling long-arm statutes attempt to protect—the consumers. Weissenfels will simply pass the cost on to the consumers via higher prices for its chains, or if possible, attempt to insure that its products do not reach areas like Arkansas where negligible amounts of revenue do not justify running the risk of being sued.[6]

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[6] This latter point could have interesting market concentration and antitrust implications. Liberal interpretation of long-arm statutes may put large firms who can market in high volume everywhere at an economic advantage relative to smaller firms with a thinner market. A large firm with a high sales volume may be able to more economically defend a lawsuit arising in, say Arkansas, because of its higher sales volume. The larger firm can spread the substantial cost of litigation over a larger revenue pool than a small firm with a lower volume of business.

Justice Holmes advocated letting accident costs lie where they fall in order to minimize administrative costs, unless some clear social benefit is achieved by shifting them. *See* O. W. Holmes, Jr., *The Common Law* 76-77 (Howe ed. 1963). Analogously, the goals of justice and social benefit will not suffer materially by eliminating Weissenfels as a party-defendant in this lawsuit.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT

APPENDIX C

Opinion of U. S. District Court

United States District Court
Western Distritc of Arkansas
Texarkana Division

Woodrow Hutson, Plaintiff,

v. No. T-76-89-C

Fehr Brothers, Inc. and Acciaierie Weissenfels, Defendants.
John David Epperson, Plaintiff,

v. T-77-4031

Fehr Brothers, Inc. and Acciaierie Weissenfels, Defendants.

Memorandum Opinion

These are product liability cases in which the plaintiffs seek damages for injuries caused by the breaking of a chain. The plaintiffs are citizens of Arkansas. Fehr Brothers, Inc. is incorporated under the laws of New York with its principal place of business in New York City. Acciaierie Weissenfels (hereafter "AW") is an Italian corporation with its principal place of business in Fresine, Valromana, Italy. The amount in controversy in each case exceeds $10,000.00, and this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332. An alien corporation is deemed a citizen of the country of incorporation for the purposes of determining diversity jurisdiction. See 1 Moores' Fed. Prac. ¶ 0.75[3]

The complaint in each case alleges that the chain was manufactured by AW and sold to Fehr Brothers, Inc., that Fehr

Brothers Inc. sold the chain to R. B. Carroll, Jr., of Murfreesboro, Arkansas, who in turn sold it to plaintiffs' employer, Murfreesboro Lumber Co.

AW has moved for dismissal of the complaint contending that this Court lacks personal jurisdiction over it. It contends that it performed none of the acts enumerated in Arkansas's long-arm statute, which would subject it to service outside the state and even if this Court found that AW had performed one of the acts enumerated in the long-arm statute, the exercise of personal jurisdiction would violate standards of due process. We hold that AW's motion to dismiss should be denied.

Plaintiffs contend that they were injured on May 9, 1976 in Murfreesboro, Arkansas, by the breaking of a defective chain. Originally plaintiffs asserted the chain was manufactured by AW. They now admit that the chain was manufactured in Yugoslavia, but packaged and distributed by AW as its own product. After packaging the chain, AW sold it to Frank Fehr & Company, a British corporation, pursuant to an exclusive distributorship agreement. Through its American subsidiary, Fehr Brothers, Inc., the British Corporation, sold AW chain throughout the United States. Fehr Brothers sold the chain which is the subject of this lawsuit to R. B. Carroll d/b/a Carroll Building and Appliance Company in Murfreesboro, Arkansas. From October 1, 1972 through September 30, 1976, Fehr Brothers sold $74,551.35 worth of AW chain to Arkansas customers and distributed advertising brochures within Arkansas on AW products.

AW was served in Italy in accord with Italian law.

Ark. Stat. Ann. § 27-2502(c)(1)(d) provides in part as follows:

> A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a (cause of action) (claim for relief) arising from the person's

(d) causing tortious injury in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct in this State or derives substantial revenue from goods consumed or services used in this State;

Subsection D of the same statute authorizes service outside the State of Arkansas when personal jurisdiction is authorized §27-2502(c). Ark. Stat. Ann. §27-2503(1)(b) (1975 Supp.) authorizes service outside Arkansas "in the manner prescribed by the law of the place in which the service is made. . . ."

We find that AW subjected itself to the jurisdiction of the courts in Arkansas in that it caused a tortious injury within Arkansas by an act or omission occurring in Italy and that AW derived substantial revenue from goods consumed in Arkansas. "Substantial revenue" derived from goods consumed within Arkansas can be found even though such sales constitute a miniscule percentage of the defendant's total business throughout the world. *Pennsalt Chem. v. Crown Cork & Seal*, 244 Ark. 638, 426 S.W. 2d 417 (1968); *International Harvester Co. v. Hendrickson Mfg. Co.*, 249 Ark. 298, 459 S.W. 2d 62 (1970). In other words the determination of whether a defendant derives substantial revenue from sale of its products within Arkansas is to be made with regard only to those sales occurring in Arkansas. This Court finds that sales by Fehr Brothers totalling $74,551.35 provided the defendant AW with substantial revenue.

Ark. Stat. Ann. §27-2501(c)(1)(d) does not require that the defendant in question to have effectuated the sales within Arkansas. It only requires that the defendant derive substantial revenue from goods consumed within Arkansas and that the tortious injury stem from those goods. Extraterritorial service on AW is therefore authorized by the Arkansas long-arm statute.

Defendant AW argues that application of §27-2501(c)(1)(d) to the facts of this case would violate standards of due process of law. Defendant relies upon language in *Hanson v. Denkla*, 357 U.S. 235, 253 (1958), which was recently cited with approval in *Shaffer v. Heitner*, — U.S. — (June 24, 1977), to the effect that a defendant must have "purposefully avail[ed] itself of the privilege of conducting activities in the forum state" to subject itself to personal jurisdiction. AW argues that it sold the chain in question to Frank Fehr; that in doing so it lost all right to control the destination of the chain; and that due to loss of control over the chain, AW never purposefully availed itself of the privilege of conducting activities in Arkansas.

This same argument was rejected twice by the Arkansas Supreme Court. *Pennsalt Chem. v. Crown Cork & Seal, supra; International Harvester v. Hendrickson Mfg., supra.* We recognize that a federal question is raised concerning whether federal due process standards would be violated by holding AW subject to the jurisdiction of this Court. We hold that on the alleged facts of this case, the phrase "purposefully avails itself of the privilege of conducting activities" includes the actions of AW. We reach this result because AW's product which it allegedly packaged and warranted as its own is the subject matter of this litigation. In delivering the chain to Frank Fehr and Company, AW must have anticipated that the chain would be distributed in all fifty states of the United States. It must have foreseen that its product would be sold within Arkansas.

AW was not the entity which consummated the sale within Arkansas. If this fact were decisive and if a foreseeability test for "purposely avails itself" were not applied in products liability case, an injured person would almost always be left with no direct recourse against the manufacturer of the product causing his injury. There is a growing public policy in favor of giving an injured person recourse against the manufacturer and/or

distributor of a product which causes his injury, as manifested by diminishing emphasis on "privity of contract." In Arkansas the lack of privity of contract is not a defense available to a manufacturer or distributor. Ark. Stat. Ann. §85-2-318.1 (1975). The effect of this statute would be nullified in almost every case arising in an Arkansas forum if this Court were to adopt defendant's interpretation of the phrase "purposefully avails itself of the privilege of conducting activities in the forum state." We therefore hold that in products liability cases, such language precludes extrastate service pursuant to state law only if the defendant could not have foreseen that his product would be sold within the forum. *See Packard v. Cessna Aircraft Co.*, 366 F. Supp. 966 (D. Alaska 1973).

The Clerk will prepare orders overruling AW's motions to quash service and dismiss the complaint and ordering AW to answer within thirty (30) days.

Date: This 22 day of August, 1977.

/s/ PAUL X WILLIAMS

APPENDIX D

Constitutional and Statutory Provisions

14th AMENDMENT

§ 1. [Citizenship—Due process of law—Equal protection] —All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ARK. STATS. ANN. § 27-2502

27-2502. Bases of personal jurisdiction over persons outside this state—A. Definition of "person." As used in this section, "person" includes an individual or his executor, administrator or other personal representative, or a corporation, partnership, association, or any other legal or commercial entity, whether or not a citizen or domiciliary of this State and whether or not organized under the laws of this State.

B. Personal jurisdiction based upon enduring relationship. A court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, or maintaining his or its principal place of business in, this State as to any cause of action.

C. Personal jurisdiction based upon conduct.

1. A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a (cause of action) (claim for relief) arising from the person's

(a) transacting any business in this State;

(b) contracting to supply services or things in this State;

(c) causing tortious injury by an act or omission in this State;

(d) causing tortious injury in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct in this State or derives substantial revenue from goods consumed or services used in this State;

(e) having an interest in, using, or possessing real property in this State;

(f) contracting to insure any person, property, or risk located within this State at the time of contracting; or

(g) receipt, whether in or out of this State, as a creditor or distributee or one claiming as such, of money or property from an executor, administrator or other personal representative serving under appointment by any probate court of this State.

2. When jurisdiction over a person is based solely upon this section, only a (cause of action) (claim for relief) arising from acts enumerated in this section may be asserted against him.

D. Service outside the State. When the exercise of personal jurisdiction is authorized by this section, service may be made outside this State.

E. Inconvenient forum. When the court finds that in the interest of substantial justice the action should be heard in another forum, the court may stay or dismiss the action in whole or in part on any conditions that may be just.

F. Other bases of jurisdiction unaffected. A court of this State may exercise jurisdiction on any other basis authorized by law.